

STATEMENT OF DONALD W. MURPHY
DEPUTY DIRECTOR, NATIONAL PARK SERVICE
DEPARTMENT OF THE INTERIOR
BEFORE
THE HOUSE COMMITTEE ON RESOURCES
CONCERNING THE WASHINGTON AQUEDUCT AND THE EFFECTS OF ITS DISCHARGE ON
THE C&O CANAL NATIONAL HISTORICAL PARK AND THE ENDANGERED SHORTNOSE
STURGEON

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Mr. Chairman, thank you for the opportunity to appear before this committee to present the views of the Department of the Interior on discharges from the Washington Aqueduct on the Chesapeake and Ohio (C&O) Canal National Historical Park and on the endangered shortnose sturgeon.

The U.S. Army Corps of Engineers (Corps) operates the Washington Aqueduct facility which provides potable water to the District of Columbia and certain jurisdictions in Northern Virginia. The U.S. Environmental Protection Agency (EPA) regulates the discharges from this facility within the District of Columbia. Although the Department of the Interior does not bear primary responsibility for the operation of the Washington Aqueduct facility or the regulation of its discharges, we take very seriously our stewardship responsibilities for the resources entrusted to our care. Since we became aware of environmental concerns regarding the Washington Aqueduct facility's operation, we have immersed ourselves in the complex legal and technical issues associated with them, and are committed to working with the other agencies and jurisdictions to address any problems and concerns.

Recently, EPA provided a key opportunity for all concerned with the impacts of the Washington Aqueduct facility. On March 28, 2002, EPA proposed a revised discharge permit for the facility under the National Pollution Discharge Elimination System (NPDES). The Department of the Interior has prepared comments on the proposed permit. As an interim goal, the Department supports the approximately 35 percent further reduction of sediments discharged to the Potomac River proposed in the revised permit. However, the Department believes there is a need for additional research and monitoring of discharge impacts.

With respect to the U.S. Fish and Wildlife Service's (FWS) involvement in the Washington Aqueduct issue, the FWS has stewardship responsibility for certain Potomac River species. Using the best scientific information available, the FWS has already determined that, except for occasional transient individuals, endangered species under the jurisdiction of the FWS are neither present, near, nor likely to be affected by the discharges for purposes of the Endangered Species Act. Please note that the National Marine Fisheries Service, not FWS, has sole regulatory authority over the shortnose sturgeon. If any new information that has not already been considered becomes available suggesting effects to listed species or their designated critical habitat, the FWS will determine if Section 7 consultation under the Endangered Species Act must be reinitiated.

In addition to ESA listed species, the FWS has statutory authority and trust responsibilities with respect to a

number of Potomac River migratory fish species including striped bass, alewife, blueback herring, and American shad. In 1998, EPA requested that FWS convene a panel of fisheries experts to recommend short-term measures to protect fish potentially impacted by the discharges, while the discharge permit was being re-issued. In 1999, the panel recommended, among other measures, a time of year restriction on the discharges that corresponds to sensitive breeding and migratory seasons. EPA has included this restriction in its current draft permit. The FWS Environmental Contaminants Branch also provided limited technical assistance to EPA in the development of a workplan for a 3-year discharge study. The FWS believes additional studies designed to assess the direct and cumulative impacts on aquatic resources under FWS jurisdiction are needed. The FWS is willing to provide technical assistance with respect to these studies.

With respect to the National Park Service's (NPS) involvement in the Washington Aqueduct issue, the facility's discharges flow through conduits traversing the C&O Canal National Historical Park managed by NPS. These conduits empty either on parkland near the Potomac River or in the river itself.

The establishment of the C&O Canal National Historical Park was the culmination of years of community efforts to save the canal as a recreational, natural, and historical resource. It appears that Congress sought to ensure that creation of the park would not disturb certain valid existing rights and permits by including in the enabling legislation (P.L. 91-664) language that grandfathered them. Section 5(a) of that law states: "The enactment of this Act shall not affect adversely any valid rights heretofore existing, or any valid permits heretofore issued, within or relating to areas authorized for inclusion in the park." The Washington Aqueduct has had discharge lines in place since at least 1927, well before the park was established in 1971. Since the hearing on the Washington Aqueduct by the Subcommittee on National Parks, Recreation, and Public Lands on October 30, 2001, the Department, with the cooperation of the Corps, has been reviewing relevant documents to determine whether all the existing discharges fall within the scope of the grandfathered permits and rights-of-way.

The National Park Service believes there is a need to assess the nature and extent of any potential impacts from these discharges on park resources. The NPS is willing to work with the other federal agencies on these studies. If NPS ultimately determines that authorized discharges are harming park resources, the agency will take appropriate action to protect park resources consistent with the finding of the studies NPS and FWS have identified.

In addition to managing the C&O Canal National Historical Park, the NPS also manages the riverbed of the Potomac in the District of Columbia. Based on its unique assignment to the Department's jurisdiction, NPS has long managed the riverbed as miscellaneous property on behalf of the Office of the Secretary of the Interior, but it is not managed as a unit of the National Park System. Nevertheless, the potential impact of sedimentation on the riverbed from the Washington Aqueduct discharges is another area of concern to the NPS.

In addition to collecting information regarding the Washington Aqueduct discharges, since the October, 2001 hearing on this subject, the NPS has begun collecting information from other units of the National Park System that are also involved with discharges that require NPDES permits in order to compare how the agency addresses situations similar to the one here in Washington, D.C. One such unit is Gateway National Recreation Area in New York and New Jersey, where the water quality is heavily influenced by permitted discharges from sewage treatment plants, combined sewer overflows, industrial effluents, and toxic substances from abandoned landfills. As part of an ongoing program to improve water quality in the park, Gateway staff routinely review draft NPDES permits and provide recommendations to New York State and New York City governments. Over the past decade, the staff has: (1) reviewed and commented on four

permits for sewage treatment plants adjacent to Jamaica Bay (26th Ward, Red Hook, Coney Island, and the Rockaway plants); (2) participated in a review of New York City discharges to reduce the volume of sediment flowing into to Jamaica Bay; and (3) collaborated with the Interstate Sanitation Commission in an effort, though unsuccessful, to eliminate the year-round use of chlorine in New York City sewage treatment plant effluents. However, we note that the drinking water plant return of sediment back to the Potomac River by the Washington Aqueduct is qualitatively different from the raw and treated sewage discharges that the Gateway staff monitors.

Mr. Chairman, in conclusion, the Department is committed to continuing to learn more about the impacts of the outfalls from the Washington Aqueduct on the resources managed by the Department and working with the Federal agencies with authority over the discharges to minimize those impacts. That concludes my prepared remarks, and I would be pleased to answer any questions you or other committee members might have.

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